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ZNR UUUUU ZZH
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FM AMEMBASSY ROME
TO RUEHC/SECSTATE WASHDC PRIORITY 5187
INFO RUCPDOG/USDOC WASHDC PRIORITY
RUCNMEU/EU INTEREST COLLECTIVE
RUEHBJ/AMEMBASSY BEIJING 1223
RUEHMIL/AMCONSUL MILAN 7276
RUEHNP/AMCONSUL NAPLES 1586
RUEHFL/AMCONSUL FLORENCE 1515
RUEAHLG/DEPT OF HOMELAND SECURITY WASHINGTON DC
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SUBJECT: FOURTH-ANNUAL IPR RETREAT: ITALIAN JUDGES SEE
GROWING CHINESE AND MAFIA INVOLVEMENT IN COUNTERFEITING

THIS CABLE IS SENSITIVE BUT UNCLASSIFIED

Refs: A) ROME 548, B) 05 ROME 4046, C) 05 ROME 1569

¶1. Summary: Mission Italy's fourth-annual IPR judicial workshop brought together judges and prosecutors from across Italy with their U.S. counterparts to discuss the investigation and prosecution of IPR crime. The U.S. delegation included two federal judges, two federal prosecutors, and Department of Justice and Immigration and Customs enforcement officials. Key themes included the growing threat of Chinese counterfeiting and the need to balance administrative and criminal penalties for IPR violations. There was near-unanimous agreement on the need for greater consumer education to change attitudes about IPR crimes. Italy's national anti-mafia directorate intends to step up IPR investigations to help fight organized crime. End summary.

Background

¶2. Italian judges continue to be a "weak link" in Italy's IPR enforcement regime. Italy's IPR laws are among the toughest in Europe and contemplate prison terms of up to four years. In reality, though, few defendants receive serious punishments. While the number of Italian judges who "get it" on IPR is growing, others continue to find defendants not guilty based on the concept of economic need--i.e., piracy is okay for the unemployed with no alternative income. Suspended sentences are the norm in Italy, even for cases of commercial-scale piracy. The belief that piracy and counterfeiting are social safety valves--providing employment to illegal aliens who might otherwise turn to more serious crime--remains frustratingly prevalent.

¶3. To counter these attitudes, the Embassy in 2003 initiated a program to sensitize Italian judges to IPR issues. This year, Embassy Rome hosted its fourth-annual IPR judicial retreat May 22-24. Thirty high-level Italian prosecutors,

judges, and law enforcement officials attended. To stimulate frank discussion, these workshops are off-the-record. The Business Software Alliance (BSA), the Federazione Industria Musicale Italiana (FIMI, a music industry group that represents both Italian and American labels), the Federazione Anti-Pirateria Audiovisiva (FAPAV, an Italy-based anti-piracy organization funded principally by the Motion Picture Association of America), and the International Anti-Counterfeiting Coalition (IACC) once again co-sponsored this workshop and paid the most costs. This year's event featured sessions on IPR and organized crime, internet piracy, and administrative versus criminal penalties.

¶4. The American delegation this year included Deputy Assistant Attorney General Laura Parsky, Federal Appeals Court Judge Arthur Gajarsa, Federal Judge (District of Massachusetts) William Young, Department of Justice Senior Litigation Counsel Eric Klumb, Deputy U.S. Attorney (District of Miami) Richard Boscovich, and David Faulconer of the Bureau of Immigration and Customs Enforcement.

¶5. Italian participants included the Director General of the Ministry of Justice, Nicola Cerrato; Deputy Anti-Counterfeiting High Commissioner, Sebastiano Sorbello; and Court of Cassation (Supreme Court) Judge Vittorio Ragonesi. The Italian side also included several high-level prosecutors from Italy's Direzione Nazionale Antimafia (DNA, the national anti-mafia directorate within the Ministry of Justice), as well as prosecutors from key Italian district courts, such as Trieste, Milan, Florence, Bologna, Rome, Naples and Palermo.

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Piracy On the Rise Again

¶6. The industry cosponsors opened the workshop by reporting that piracy levels, after several years of improvement, are on the increase again. Italy's prolonged economic stagnation is partly to blame, particularly for the stubbornly high level of software piracy. BSA reported that business software piracy rates in Italy have once again risen to just over 50 percent, as Italian businesses try to save money on unlicensed software.

China, China, China

¶7. While the problem of Chinese counterfeiting was mentioned in previous judicial retreats, this year the "China threat" was center stage. An Italian prosecutor gave a case study on a criminal group that has been pirating pay-per-view soccer matches and re-broadcasting them over the Internet via servers in China. Other Italian prosecutors told of recent cases of Chinese nationals arrested leaving Naples' Capodichino airport with millions of euros in cash, the proceeds from the sale of knockoff goods smuggled from China. Richard Boscovich recounted very similar cases in Miami, where Chinese counterfeiters have brought in large quantities of fakes, sold them quickly, and then departed the country before getting caught. David Faulconer gave a presentation on the Bureau of Immigration and Customs Enforcement's IPR programs and ICE's efforts to cultivate contacts within the Chinese customs services. Faulconer offered to help Italian participants better liaise with Chinese authorities.

Fines Versus Jail

¶8. Another focus point was the appropriate balance among criminal, civil, and administrative enforcement.

Some Italian participants sharply criticized Italy's euro 10,000 (\$13,000) fine for possession of counterfeit goods. The fine, established in 2005, is simply too large to be practical, some argued. In the rare cases where police actually have enforced the fine, one critic noted, they have mainly targeted foreign tourists.

¶9. One prosecutor, however, asserted that an over reliance on criminal sanctions was also unworkable, given Italy's overburdened and glacially slow criminal courts. An anti-mafia prosecutor noted that for members of the Naples-based Camorra crime organization--which is believed to control much of the Italian market for fakes--a prison sentence of a few years is no deterrent. Many young mafiosi consider prison a right of passage. Also, he continued, the profits from counterfeiting and piracy rival that of narcotic smuggling, meaning even the maximum sentence of four years appears, in the eyes of Camorra members, a very low risk given the potential rewards of IPR crime.

¶10. Several participants argued that a well-managed system of administrative punishment for consumers and sellers, coupled with criminal penalties only for the most serious of cases, would be more effective than increasing criminal sanctions across the board. Some of the anti-mafia prosecutors argued that Italian and EU law should explicitly recognize piracy and counterfeiting as an organized criminal activity. In Italy, such a change would allow investigation and prosecution of IPR crime to be centrally coordinated by the national antimafia directorate (DNA). The industry representatives said allowing rights' holders to pursue punitive damages in civil cases (something not

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currently allowed under Italian law) would also greatly improve enforcement, especially for software violations.

More Public Education

¶11. Though there were differences of opinion on the efficacy of criminal sanctions, everyone agreed that Italy must offer more public education. Many commented that efforts of police, courts and prosecutors will come to naught unless Italian consumers understand the damage IPR crime is doing to Italy's economy and society. In particular, consumers ignore that counterfeit products, such as pharmaceuticals, cosmetics, detergents, electrical equipment, car parts, etc., are on the market and endanger their health and safety. [Note: In October 2005, the Mission sponsored its first-ever bilateral exchange on public education, bringing together IPR experts from the Dept. of Justice and USPTO with their Italian counterparts (see ref B). End note.]

Comment

¶12. We believe our annual judicial IPR workshops are paying dividends. Four years into this effort, the Embassy IPR retreat is gaining a reputation as a prestigious program that now has an informal alumni network. Our program received favorable mention at the most recent national meeting of the Italian magistrates association. The quality of the discussion was higher this year, with fewer platitudes about the importance of IPR and more exchange about specific investigative techniques and legal issues. The Italian participants also came better prepared this year in comparison with the earlier conferences and expressed great interest in attending similar meetings in the future.

¶13. Comment continued: While we have given repeat invitations to a few high-ranking, influential judges and prosecutors who are already committed to IPR, we also try to invite judges who are less sympathetic and even openly skeptical. Following this years event, one prosecutor (who had previously been among the skeptics) contacted us to say that, as a result of what he learned at the workshop, he was dedicating more investigative resources to a piracy case in his district and had issued additional search warrants. An official with the Direzione Nazionale Antimafia said this year's workshop prompted him to engage more closely with Italy's financial police on IPR cases. He said his office is now exploring ways to approach the Chinese Embassy in Rome to address piracy and counterfeiting.

¶14. Comment continued: We intend to continue this dialogue by holding at least one such judicial outreach event every year. We are also considering ways to reach an even greater number of judges, perhaps by holding smaller workshops in individual districts. For more information on Mission Italy's IPR outreach, please contact Acting Economic Minister Counselor for Economic Affairs Kathleen Reddy (ReddyKM@State.gov) or FSN Economic Specialist Piero Ippolito (IppolitoP@State.gov).

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